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OGC HAS REVIEWED.

MEMORANDUM FOR MR. HOUSTON

22 September 1950

SUBJECT: CIA Regulation [REDACTED]

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1. [REDACTED] request that Communications be granted more power to negotiate does not appear to be consistent with existing delegations of authority, designated Contracting Officers or the Armed Services Procurement Act, Public Law 413, 80th Congress, [REDACTED]

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2. When the President signed the Armed Services Procurement Act, he wrote to the Secretary of Defense in pertinent part as follows:

".....There is danger that the natural duties for flexibility and speed in procurement will lead to excessive placement of contracts by negotiation and undue reliance upon large concerns, and this must not occur....."

The Armed Services Procurement Regulations are an effectuation on a policy level of the instructions contained in the President's letter, and it is stated in the policy provisions of said Regulations that procurement shall generally be effected by advertising for bids and thereafter awarding a contract to the lowest responsible bidder, all in accordance with the detailed requirements and procedures set forth in Sec. II of the ASPR's. Procurement by negotiation is an expedient and residual concept, and its conduct is determined by the detailed requirements of procedures set forth in Sec. III of the ASPR's.

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3. [REDACTED]

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The Director has imposed upon the administrative policies and practices of CIA a standard requiring that procurement, either covert or overt, will be effected to the extent feasible in conformity with general policies and procedures contained in the ASPR's. It would appear, as a prima facie matter, that procurement of equipment, supplies and services of a confidential nature would normally be chargeable against unvouchered funds, though this does not necessarily eliminate the requirement of advertising in as practicable a manner as is possible. Where the use of confidential funds cannot be justified, the regulations of the Director require that the procurement be accomplished from vouchered funds.

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5. The power of negotiation is antecedent to and more restricted than the power of contracting. In our operations the former may be either formal or informal, usually of a technical nature and affecting many factors which need not be considered here. Requests for powers of negotiation appear to lie outside the area of a regulation as contemplated here.

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